

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

OPINION AND ORDER

The Opinion and Order addresses whether Plaintiff may discover the “Mortality Review” conducted by Defendant, Correctional Healthcare Management of Oklahoma, Inc., concerning the death of Charles Jernegan. The Mortality Review has been reviewed by the Court *in-camera*.

Defendant contends that the Mortality Review is privileged and protected from discovery under 63 Okla. Stat. §§ 1-1709 and 1709.1. Defendant also suggests that the Court can protect the Mortality Review from discovery under Federal Rule of Evidence 501.

This case is brought under 42 U.S.C. § 1983. In federal question cases such as this one the court looks to federal privilege law. Therefore 63 Okla. Stat. §§ 1-1709 and 1709.1 are not controlling. There is no federal statutory peer review privilege. The courts considering the question have declined to recognize a federal peer review privilege under Federal Rule of Evidence 501. See *Adkins v. Christie*, 488 F.3d 1324 (11th Cir. 2007); *Agster v. Maricopa County*, 422 F.3d 836 (9th Cir. 2005); *Virmani v. Novant Health, Inc.*, 259 F.3d 284 (4th Cir. 2001); *Memorial Hosp. for McHenry County v. Shadur*, 664 F.2d

1058 (7th Cir. 1981); *Williams v. University Medical Center of Southern Nevada*, 760 F.Supp.2d 1026 (D. Nev. 2010); *Jenkins v. DeKalb County, Georgia*, 242 F.R.D. 652 (N.D. Ga. 2007); *Cohlmia v. Ardent Health Services, LLC.*, 448 F.Supp.2d 1253 (N.D. Okla. 2006); *In re Administrative Subpoena Blue Cross Blue Shield of Massachusetts, Inc.*, 400 F.Supp.2d 386 (D. Mass. 2005); *Weiss ex rel. Estate of Weiss v. County of Chester*, 231 F.R.D. 202 (E.D. Pa. 2005); *Nilavar v. Mercy Health System-Western Ohio*, 210 F.R.D. 597 (S.D. Ohio 2002); *but see Weekoty v. U.S.*, 30 F.Supp.2d 1343 (D. N.M. 1998).

Based on the absence of a federal statutory peer review privilege and the weight of case authority, the court finds that the Mortality Review is not protected from discovery in this federal question case.

SO ORDERED this 22nd day of May, 2012.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE